

FILED

APR 28 2005

MICHAEL W DOBBINS
CLERK, U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

YOLANDA AYALA as next friend of her
brother RAMON AYALA, on behalf of
a class of similarly situated persons,

Plaintiff,

v.

THE CITY OF CHICAGO, et al.

Defendants.

No. 05 C 1967

The Hon. James F. Holderman

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Yolanda Ayala, as next friend of her brother Ramon Ayala and on behalf of a class of similarly situated persons (hereinafter, the "Plaintiff Class"), by her undersigned attorneys, respectfully moves this Court for entry of an order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining defendants City of Chicago and Chicago Police Superintendent Phil Cline from violating Plaintiffs' right to be free from illegal detention by the Chicago Police. In support, Plaintiff states:

1. This litigation concerns recurring violations of the rights of the Plaintiff Class¹ under the Fourth and Fourteenth Amendments to be free from unreasonable seizures and detentions. Specifically, the City of Chicago Police Department (hereinafter, "Police") is engaging in a practice and policy of detaining Chicago citizens who are witnesses in criminal investigations, and holding them for many hours, against their will, in Chicago police station interrogation rooms, even though the Chicago Police have no probable cause to suspect these

¹ A motion for certification of the Plaintiff Class is being submitted contemporaneously with this motion.

persons of any wrongdoing. These violations, which cause serious and substantial harm to the Plaintiff Class, are ongoing and threaten to routinely recur unless enjoined.

2. It is well established that a plaintiff seeking a preliminary injunction must show: (1) that there is a reasonable likelihood of success on the merits; (2) that the plaintiff will suffer irreparable harm if the injunction is denied; (3) that the harm the plaintiff would suffer in the absence of a preliminary injunction will be greater than the harm the defendant would suffer if the injunction is granted; (4) that the plaintiff has no adequate remedy at law; and (5) that the injunction will not harm the public interest. *Roland Machinery Co. v. Dresser Industries Inc.*, 749 F.2d 380, 386-88 (7th Cir. 1984); *accord Cooper v. Bombela*, 34 F. Supp. 2d 693, 698 (N.D. Ill. 1999).

3. Each of these conditions is met in this case. *First*, Plaintiffs have a reasonable likelihood of success on the merits of the claim asserted against the City of Chicago and the Superintendent of Police. Under *Monell v. Department of Soc. Serv.*, 436 U.S. 658 (1978), plaintiffs suing a local government unit under 42 U.S.C. § 1983 must allege that the government defendants have engaged in a custom or policy that has deprived the plaintiffs of their constitutional rights.

4. Plaintiffs in the present case make such a claim. Plaintiffs allege that Defendants have engaged in a practice of detaining Chicago citizens who are witnesses in criminal investigations and holding them against their will in police station interrogation rooms, even though the Police have no probable cause to suspect these persons of any criminal wrongdoing. At a hearing, plaintiffs will be able to establish that this practice is in fact occurring and that it threatens to recur unless and until it is enjoined. In addition, plaintiffs can show that the Police witness detention policy is a clear violation of fundamental Fourth Amendment principles.

5. Plaintiffs' counsel have already amassed evidence that the Police, as a matter of standard operating procedure, detain witnesses in locked interrogation rooms for questioning without probable cause to arrest. By way of example, plaintiffs' counsel deposed two Police detectives in *Johnson v. City of Chicago*, No. 03 C 6620 (N.D. Ill.), a currently pending case seeking damages on behalf of five illegally detained witnesses, who admitted that it is "standard procedure when leaving [a] witness alone in [an interview] room to lock the door;" that it is not "unusual" or "inconsistent with the way [officers have] been trained" to hold a witness "in an interview room . . . for 20 hours without being interviewed," or longer in some cases; and that it is not "unusual . . . to place a witness in an interview room . . . for two days." In fact, one detective was "aware of [witnesses] being in interview rooms for longer than 72 hours." See Kevin Scott Dep. Tr. at 223-24, 243-45, 289-90, attached as Exhibit A; Mason Dep. Tr. at 43-44, 46-47, 139-40, 171-73, attached as Exhibit B.

6. In addition, defendant Cline has admitted under oath in injunctive proceedings in *First Defense Legal Aid v. City of Chicago*, 225 F. Supp. 2d 870 (N.D. Ill. 2002), *rev'd on other grounds*, 319 F.3d 967 (7th Cir. 2003), that the Chicago Police employ standard procedures in their treatment of witnesses at Chicago Police stations. Based on Defendant Cline's testimony and that of Chicago Police Detective John Farrell, the District Court in *First Defense* found that the Chicago Police systematically engage in the following procedure with respect to witness detentions:

- (a) Witnesses are taken to police stations for questioning, are thoroughly searched, and are then "secured" by being locked in small, windowless interrogation rooms with no toilets, no running water, and typically furnished only with a metal bench bolted to the wall.

- (b) Witnesses typically remain in such rooms for many hours, and in some cases for days.
- (c) When a witness' lawyer appears at the police station and asks to speak with his or her client, the Chicago Police routinely refuse to grant the lawyer access to the witness.
- (d) The Chicago Police confine witnesses in these conditions in order to "overcome their reluctance" to cooperate with the police.
- (e) Witnesses confined in these conditions are not free to leave the police stationhouses and are, in fact, confined there against their will.

First Defense Legal Aid, 225 F. Supp. 2d at 875, 877-78.²

4. This practice is clearly unconstitutional. In *Dunaway v. New York*, 442 U.S. 200, 206-07 (1979), the Supreme Court held that the police violated the Fourth and Fourteenth Amendments when, "without probable cause to arrest, they took petitioner into custody, transported him to the police station, and detained him there for interrogation." The practice at issue in this case is governed by *Dunaway* and constitutes a clear constitutional violation.³ Indeed, the Police practice exactly what the Supreme Court banned in *Dunaway*: they take witnesses into custody, transport them to the police station, and detain them there for questioning, all without probable cause.

² The factual findings in the *First Defense* case, including those recited above, were not challenged in the Seventh Circuit, which reversed the District Court on a pure question of First Amendment law. See 319 F.3d at 972-73.

³ The Supreme Court in *Dunaway* said that the petitioner's detention by the police, without consent and without probable cause, was an arrest, and reaffirmed the long-standing principle that any arrest without probable cause is unconstitutional. See *Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975) ("The standard for arrest is probable cause."); *Ker v. California*, 374 U.S. 23, 34-35 (1963) (to be lawful arrest without warrant must be based on probable cause).

6. Therefore, the Plaintiff Class has a reasonable likelihood of success on the merits of its case.

7. *Second*, the defendants' continued practice of illegally detaining members of the Plaintiff Class causes irreparable harm. Unless this practice is enjoined, current and future members of the Plaintiff Class will be deprived of their liberty. Plaintiffs will not only suffer incalculable psychological harm from the fear, sense of coercion, and deprivation of freedom they suffer from being detained, without probable cause, by government agents. They will also suffer physically, as they are often held without adequate nourishment or sleep in small interrogation rooms, with no beds, no toilets, and no running water. Finally, Plaintiffs will suffer from the loss of the dignity they are due as United States citizens, as the Chicago Police violate their Fourth Amendment and Fourteenth Amendment rights to be free from unreasonable seizures and detentions.

8. Plaintiffs who can show, "by some evidence, that they had been deprived of a constitutional right . . . , as a matter of law, also satisfy the burden of showing irreparable harm." *David K. v. Lane*, 839 F.2d 1265, 1268 (7th Cir. 1988). Plaintiffs, as discussed above, can easily show that the Police violated, or will violate, their Fourth Amendment and Fourteenth Amendment rights. Thus, they would suffer irreparable harm if a preliminary injunction were not issued.

9. *Third*, the Plaintiff Class has no adequate remedy at law. It is well established that the violation of constitutional rights is not remediable by an award of money damages. *See, e.g., National People's Action v. Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) (holding that injunctions are "especially appropriate" in the context of constitutional violations because of the inadequacy of money damages).

9. *Fourth*, the balance of harms weighs in favor of the Plaintiff Class. The defendants will not be harmed by a preliminary injunction that merely requires their compliance with law. In contrast, current and future members of the Plaintiff Class will face serious and harmful illegal deprivations of their liberty if the preliminary injunction is not awarded.

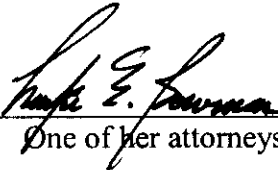
10. *Fifth*, a preliminary injunction in this case will not harm the public interest. Such an injunction will, in fact, serve the public interest by protecting the constitutional rights of citizens to be free from unreasonable seizures and detentions by the Chicago Police. The protection of such rights is a fundamental public interest. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576 (1992) (stating that there is a “public interest in Government observance of the Constitution and laws”); *O’Brien v. Town of Caledonia*, 748 F.2d 403, 408 (7th Cir. 1984) (holding that issuing a preliminary injunction to protect plaintiff’s constitutional rights is in the public interest); *Ayres v. City of Chicago*, 966 F. Supp. 701, 717 (N.D. Ill. 1997) (same).

WHEREFORE, Plaintiffs respectfully request that this Court (1) set an evidentiary hearing on this motion; (2) order that discovery in this case be expedited so that the hearing on this motion may occur with reasonable promptness; and (3) at the conclusion of the hearing, award the Plaintiff Class a preliminary injunction barring the defendants from continuing to

unconstitutionally seize and detain current and future members of the Plaintiff Class.

Respectfully submitted,

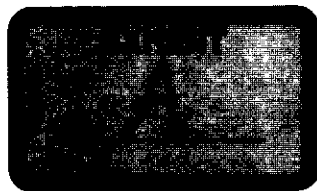
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behalf of RAMON AYALA**

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2 NORTHERN DISTRICT OF ILLINOIS

3 EASTERN DIVISION

4 GAIL JOHNSON, et al.,)

5 Plaintiffs,)

6 vs.)

7 THE CITY OF CHICAGO, et)
8 al.,)

9 Defendants.)

ORIGINAL

No. 03 C 6620

10 The continued deposition of KEVIN
11 PAUL SCOTT called for examination pursuant to
12 Notice and the Rules of Civil Procedure for the
13 United States District Courts pertaining to the
14 taking of depositions, taken before Sandra Eberle,
15 a notary public within and for the County of Cook
16 and State of Illinois, at 1111 East 60th Street,
17 Chicago, Illinois, on the 24th day of February,
18 2005, at the hour of 1:00 p.m.

19
20
21
22
23 Reported by: Sandra Eberle, RPR, CRR

24 License No.: 084-003229

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I N D E X

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<u>NUMBER</u>	<u>MARKED FOR ID</u>
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(Exhibits retained by counsel)

1 Q. But you, yourself, hadn't interviewed her
2 up until 21 and a half hours after her arrival?

3 A. Approximately.

4 Q. And the original interview that your
5 assisting colleagues conducted with her took place
6 a little before 8:00 p.m. on December 17, right?

7 A. Yes, sir.

8 Q. So from 8:00 p.m. on December 17 until
9 your substantive interview, over 20 hours had gone
10 by, right?

11 A. Yes.

12 Q. Is it unusual in your experience for a
13 witness to remain in an interview room with a
14 couple of bathroom breaks and trips to the
15 telephone for 20 plus hours without being
16 interviewed?

17 MR. YAMIN: Object to the form, foundation.

18 BY MR. BOWMAN:

19 Q. Is that unusual?

20 A. It depends.

21 Q. What does it depend on?

22 A. It depends on the course of the
23 investigation.

24 Q. So in your experience, has -- is it common

1 for the course of an investigation to be such that
2 a witness might remain in an interview room at Area
3 2 for 20 hours without being interviewed?

4 MR. YAMIN: Object to the form.

5 THE WITNESS: I wouldn't say that it's common.

6 BY MR. BOWMAN:

7 Q. Is it unusual?

8 MR. YAMIN: Same objection.

9 MR. BRODERICK: Calls for speculation.

10 BY MR. BOWMAN:

11 Q. In your experience?

12 A. It just depends, sir. I wouldn't say that
13 it's common.

14 Q. Would you say that it's unusual?

15 MR. YAMIN: Objection.

16 MR. BRODERICK: Objection. It's also vague as
17 to his experience regarding his witnesses or his
18 experience.

19 BY MR. BOWMAN:

20 Q. Let's start with his witnesses. Is this
21 something you've done in the past prior to this
22 particular occasion, have a witness for that period
23 of time --

24 A. I don't recall, sir.

1 Q. -- and not interview them? Is it possible
2 that you had?

3 MR. BRODERICK: Objection, vague.

4 THE WITNESS: I don't recall.

5 BY MR. BOWMAN:

6 Q. Did any sergeant at any point up until
7 4:30 p.m. on December 18 ever say to you that you
8 were doing something wrong by having witnesses,
9 five witnesses, present in interview rooms for over
10 21 hours?

11 MR. YAMIN: Objection, form.

12 THE WITNESS: No.

13 BY MR. BOWMAN:

14 Q. Having five witnesses in interview rooms
15 for 20 hours, was that consistent with the way you
16 were trained to interact with witnesses?

17 MR. YAMIN: Objection, form.

18 THE WITNESS: I wasn't trained to interact with
19 witnesses for a particular period of time.

20 BY MR. BOWMAN:

21 Q. When I was questioning you earlier, you
22 told me that you were trained that if a witness is
23 placed in an interview room and the witness is not
24 handcuffed and the witness is -- and the door is

1 MR. BRODERICK: You identified the exact
2 concerns that I'm going toward and we'll have to
3 work out how it's going to be tried.

4 BY MR. BOWMAN:

5 Q. Now, Bluford at this point has been there
6 for 23 hours in an interview room like Ms. Johnson
7 at 6:00 o'clock on December 18 when you went in to
8 talk with him, right?

9 A. Approximately, yes.

10 Q. This is your first meeting with Bluford,
11 right, or am I wrong about that?

12 A. Yes.

13 Q. Is it inconsistent in any way with the
14 practice and procedure that your -- that you employ
15 as a detective for you to have a witness present in
16 an interview room for 23 hours during the course of
17 an investigation without having an interview with
18 the person?

19 MR. YAMIN: Objection, form.

20 THE WITNESS: No, sir. It depends on the
21 investigation that we are conducting and what we're
22 doing at the time.

23 BY MR. BOWMAN:

24 Q. So this is not out of the ordinary in any

1 way, to have this witness present for 23 hours in
2 an interview room before you talked to him, right?

3 MR. YAMIN: Same objection.

4 THE WITNESS: It's possible that it could
5 occur.

6 BY MR. BOWMAN:

7 Q. It did occur here. And what I'm asking
8 is, is this something that is consistent with what
9 you've done in the past and what you've seen other
10 detectives do in the past?

11 A. I can't --

12 MR. BRODERICK: Asked and answered.

13 MR. YAMIN: I object to form. And you asked
14 him what he has seen in the past?

15 THE WITNESS: I can't answer for other
16 detectives, what they have done in regard to any
17 witnesses that have participated in investigations.
18 I don't really recall how long they were there.
19 It's possible that they were there that length of
20 time as well. It's possible.

21 BY MR. BOWMAN:

22 Q. Without being interviewed?

23 A. Up until the time that they were
24 interviewed. It's possible.

1 Q. Did anybody say to you -- strike that.
2 Did any sergeant or other supervisor say
3 to you that you had done anything wrong by having a
4 witness present in an interview room for 23 hours
5 before you spoke with him?

6 MR. YAMIN: Objection to form.

7 THE WITNESS: No.

8 BY MR. BOWMAN:

9 Q. And when you spoke with Bluford, he gave
10 you an account of the shooting, right?

11 A. Yes, he did.

12 Q. And he named the individual who had fired
13 the fatal shot, correct?

14 A. Yes.

15 Q. Now, you had the identity of the
16 perpetrator for the first time, right?

17 A. Correct.

18 Q. Then what did you do?

19 A. Myself and my partner showed Mr. Bluford
20 photos of -- a photo where he identified the same
21 offender that he spoke of in his interview.

22 Q. And then what did you do?

23 A. We contacted the state's attorney.

24 Q. And the point of having the state's

1 THE WITNESS: It's such a broad scenario for
2 comparison, one person versus another based on the
3 level of investigation.

4 BY MR. BOWMAN:

5 Q. And you're having trouble with the
6 question because I've asked with respect to so many
7 different witnesses or is it because it's hard to
8 define the police practice in such a broad area?

9 MR. BRODERICK: Objection to the repetitive
10 nature of the question, compound and vague. He
11 explained why he didn't understand the question.

12 THE WITNESS: All of the above.

13 BY MR. BOWMAN:

14 Q. What I'm really trying to figure out is
15 whether in your understanding of the way you're
16 supposed to conduct yourself in terms of the way
17 you've been trained and the way your superiors
18 evaluate you, is there anything that you did in
19 relation to any of the witnesses that I mentioned,
20 the two Johnsons, Brewer, Bluford, and Whitsey and
21 Pierce, that was out of line in any respect?

22 MR. YAMIN: Objection to the question and
23 foundation.

24 THE WITNESS: Out of line meaning?

1 BY MR. BOWMAN:

2 Q. Meaning inconsistent with how you were
3 trained and expected to comport yourself in
4 relation to witnesses.

5 A. No.

6 MR. BOWMAN: Now we will take a quick break,
7 and I think we are very near the end.

8 (A break was taken.)

9 BY MR. BOWMAN:

10 Q. Just a couple of questions, Detective.
11 Did you at any time ever have probable cause to
12 arrest Leo Pierce?

13 MR. BRODERICK: Objection to the extent it
14 calls for a legal conclusion.

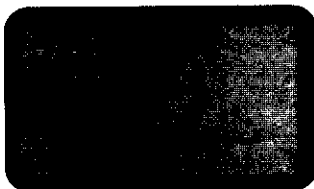
15 THE WITNESS: No.

16 BY MR. BOWMAN:

17 Q. And second, Detective, have you, yourself,
18 ever had the occasion to locate an individual who
19 is wanted for questioning only pursuant to an
20 investigative alert?

21 A. I may have. I can't recall specifically.

22 Q. In the situation in which a police officer
23 locates an individual who is wanted for questioning
24 only under an investigative alert, what is the



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3 EASTERN DIVISION

4 GAIL JOHNSON, et al.,)

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8 al.,)

9 Defendants.)

COPY

No. 03 C 6620

10 The deposition of MICHAL MASON,
11 called for examination pursuant to Notice and the
12 Rules of Civil Procedure for the United States
13 District Courts pertaining to the taking of
14 depositions, taken before Sandra Eberle, a notary
15 public within and for the County of Cook and State
16 of Illinois, at 1111 East 60th Street, Chicago,
17 Illinois, on the 22nd day of February, 2005,
18 scheduled to commence at 10:00 a.m., and commencing
19 at 10:30 a.m.

20
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23 Reported by: Sandra Eberle, RPR, CRR

24 License No.: 084-003229

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ANDREW CORCORAN, law student
JOHN DUCHEMIN, law student

I N D E XWITNESSPAGE

MICHAEL MASON

By Mr. Bowman

Direct Examination

4

Redirect Examination

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Further Redirect Examination

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By Mr. Broderick

Cross-examination

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Recross-examination

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E X H I B I T SNUMBERMARKED FOR ID

Plaintiffs' Exhibit

No. 9

83

No. 10

200

No. 11

213

No. 12

232

(Exhibits retained by counsel)

1 Q. If you thought the person had significant
2 knowledge that you needed in your investigation,
3 would that cause you to be more likely to put the
4 person in an interview room?

5 A. Yes.

6 Q. If you thought that the person was going
7 to be at the police station for a day, would that
8 cause you to be more likely to put the person in an
9 interview room?

10 A. Yes.

11 Q. How about if the person was going to be at
12 the police station for two days, would that make
13 you more likely to put the person in an interview
14 room?

15 A. I wouldn't really know that at the
16 beginning, but if somehow I had a crystal ball and
17 knew they were going to be there for two days, I
18 would probably -- I would think I would want to put
19 them in an interview room so that nobody else --
20 you know, two days is a long time. People would be
21 coming and going.

22 Q. Is it unusual in your experience to place
23 a witness in an interview room and have them there
24 for a day?

1 A. Unusual?

2 Q. Right.

3 A. No.

4 Q. How about for two days, is that unusual?

5 A. No.

6 Q. In your on-the-job training, have you
7 gotten any instruction on the rights of witnesses
8 to leave the police station after you brought them
9 in for an interview?

10 MS. ELLIS: Asked and answered.

11 BY MR. BOWMAN:

12 Q. This may be a question I've asked you
13 before. And if it is, I apologize. Could you go
14 ahead and bear with me and answer it again?

15 A. In my on-the-job training?

16 Q. Right.

17 A. I don't recall.

18 Q. How about the rights of witnesses to
19 receive visitors, have you been instructed about
20 that in your on-the-job training?

21 MS. ELLIS: Objection, asked and answered.

22 MR. BRODERICK: Objection.

23 BY MR. BOWMAN:

24 Q. Again I may have asked you it before. If

1 THE WITNESS: I don't recall.

2 BY MR. BOWMAN:

3 Q. In your on-the-job training, have you had
4 instruction concerning the rights of witnesses to
5 be fed and to drink?

6 MS. ELLIS: Objection, asked and answered.

7 THE WITNESS: I don't recall.

8 BY MR. BOWMAN:

9 Q. In your on-the-job training, have you had
10 any instruction about how long it is appropriate to
11 leave a witness secured in an interview room?

12 MS. ELLIS: Objection, asked and answered.

13 THE WITNESS: I don't recall.

14 BY MR. BOWMAN:

15 Q. Have you been told that a witness should
16 not remain in an interview room for longer than 72
17 hours?

18 A. I don't believe I've ever been told that.

19 Q. Have you had occasion to confine -- sorry.
20 Have you had occasion to place -- to secure a
21 witness in an interview room for 72 hours or
22 longer?

23 A. My recollection is that I've -- I'm aware
24 of people being in interview rooms for longer than

1 72 hours, but specifically I don't remember the
2 case or the names of the people.

3 Q. Witnesses you're referring to?

4 A. Correct.

5 Q. Now, let's have a look at Exhibit 8. Did
6 you author Exhibit 8?

7 A. Yes.

8 Q. And how about your partner, Detective
9 Milz, did he have any role in authoring Exhibit 8?

10 A. Yes.

11 Q. How did you divide the responsibility for
12 writing this report?

13 A. I don't recall.

14 Q. Do you recall the Walter Givens murder
15 investigation?

16 A. I do.

17 Q. Do you recall the -- strike that.

18 What were the circumstances of your being
19 assigned to the case?

20 A. I'm not sure I understand that.

21 Q. When were you assigned to the Walter
22 Givens murder investigation?

23 A. Shortly after it happened.

24 Q. When was that?

1 along those lines?

2 A. Yes.

3 Q. And my question was it's not unusual for a
4 witness to be secured in an interview room for 24
5 hours in your experience; isn't that right?

6 A. That's correct.

7 Q. And it's also not unusual for a witness to
8 be secured in an interview room for as much as 48
9 hours, isn't that right, in your experience?

10 A. Correct.

11 Q. The automobile that Ms. McFall was placed
12 in, you say she was put into the backseat; is that
13 right?

14 A. I didn't put her in the backseat. I
15 opened the back door for her.

16 Q. And she got into the backseat?

17 A. Yes.

18 Q. And then you closed the door, right?

19 A. Yes.

20 Q. From the inside of the car, can the
21 passenger of the backseat open that door?

22 A. Yes.

23 Q. When you got to police headquarters, did
24 you open the door for Ms. McFall or did she open

1 left Natalie McFall?

2 A. I believe we discussed this already. The
3 safety of the people on the floor.

4 Q. It's for her safety?

5 A. Right.

6 Q. So it would be your standard procedure
7 when you have a witness in an interview room and
8 you're leaving that witness alone in the room to
9 lock the door?

10 A. Yes.

11 Q. And you do that all the time?

12 A. I can't say I do it all the time. But I
13 generally do it.

14 Q. You intend to do it all the time?

15 A. Again we discussed instances where --
16 interviews where nobody else is on the floor.
17 There's no chance that other people are going to
18 see you. I may not lock the door right then.
19 However, I may lock the door at a later time.

20 Q. You told us that at the conclusion of your
21 conversation with Lisa Maniglia, after she had been
22 at Area 5 for about two hours, you offered her a
23 ride home, right?

24 A. Yes.

1 Q. When you and Detective Milz were leaving
2 work the morning -- early morning of October 29,
3 did you offer Natalie McFall a ride home?

4 A. No.

5 Q. Why not?

6 A. She had agreed to stay there.

7 Q. Did you at any point ever say to Natalie
8 McFall that she would be perfectly free to leave if
9 she would like to?

10 A. I don't believe I said that, no.

11 Q. Did Detective Milz?

12 A. I don't recall him saying that.

13 Q. Do you have any reason to believe he did
14 say that?

15 A. No.

16 Q. When Detective Milz picked up the food for
17 Natalie McFall, is it your understanding that
18 Detective Milz paid for that food?

19 A. Yes.

20 Q. Did he get reimbursed for it?

21 A. He may have been reimbursed partially by
22 me. But we usually share those costs.

23 Q. Did --

24 MR. BRODERICK: Are you done answering the

1 36 hours? Do I have that right?

2 A. Let's see. What time --

3 Q. Actually it's 38 hours, I think. Is that
4 right?

5 MR. BRODERICK: I'm sorry. Are we talking
6 midnight, 28, 29 to midnight to the polygraph?

7 MR. BOWMAN: To the polygraph at 3:00 p.m. on
8 October 30th. That's a total of 38 hours, right.

9 THE WITNESS: Approximately, yes.

10 BY MR. BOWMAN:

11 Q. Now, is it unusual for you to have a
12 witness locked in an interview room for a 38-hour
13 period of time, right?

14 A. No.

15 Q. Is that pretty commonplace?

16 MR. BRODERICK: Objection, understanding of
17 commonplace.

18 THE WITNESS: It's not unusual.

19 BY MR. BOWMAN:

20 Q. Is that standard operating procedure?

21 A. I wouldn't refer to it as standard
22 operating procedure, no.

23 Q. But it wasn't inconsistent with your
24 training to do that, right?

1 A. No.

2 Q. It wasn't inconsistent with anything
3 anybody had ever told you, right?

4 A. No.

5 Q. And you had witnesses in rooms -- in
6 locked interview rooms for that period of time
7 previous, right?

8 A. Yes.

9 Q. And subsequent, right?

10 A. Yes.

11 Q. And even longer, right, than 38 hours?

12 A. Yes.

13 Q. Yes?

14 A. Yes.

15 Q. And no one has ever suggested to you that
16 you're violating any rules or doing anything wrong
17 by locking witnesses in interview rooms for 38
18 hours or more, right?

19 MS. ELLIS: Objection to the form of the
20 question, locking.

21 BY MR. BOWMAN:

22 Q. I'm going to ride with that because I
23 think we established that what you did is you
24 locked Natalie McFall in the room, right?

1 A. Correct.

2 Q. So that's my question.

3 Sandy, if you could read it back.

4 (Record read.)

5 THE WITNESS: Correct.

6 BY MR. BOWMAN:

7 Q. In addition to yourself, you've seen --
8 you've made observations of other detectives at
9 Area 5 who have locked witnesses in interview rooms
10 for 38 hours or more, right?

11 A. Yes.

12 Q. On a number of occasions, right?

13 A. Yes.

14 Q. Before Natalie McFall, right?

15 A. Correct.

16 Q. And subsequent to Natalie McFall, correct?

17 A. Yes.

18 Q. And no one has ever complained or
19 criticized them for doing that, right?

20 MS. ELLIS: Objection, speculation.

21 BY MR. BOWMAN:

22 Q. To your knowledge?

23 A. Not to my knowledge.

24 Q. When you transported Natalie McFall to

1 Q. Well, in handling yourself, at those other
2 areas, have you, when you've been there, made sure
3 that the door was locked whenever you left a
4 witness or a suspect that you've been speaking with
5 at other areas unaccompanied?

6 A. Yes.

7 Q. And did you do that because it was your
8 understanding that department policy required that?

9 A. It was my understanding that it was
10 probably a universal rule, but I didn't know for
11 certain that every area was the same.

12 Q. Well, you remember earlier in this
13 deposition we took a look at Detective Division
14 Special Order 99-2. Remember that?

15 A. Yes.

16 Q. And that detective division special order
17 stated that detectives were to -- before placing a
18 witness or a suspect in an interview room, to
19 thoroughly search the person and to secure the
20 individual in the room, right?

21 A. Yes.

22 Q. And so would it be fair to say that it was
23 communicated to you via the detective division
24 orders in addition to what you learned from roll

1 call and from other detectives that there was this
2 requirement that the door be locked whenever any
3 individual was unaccompanied in an interview room?

4 MR. BRODERICK: I'm just going to object, asked
5 and answered.

6 THE WITNESS: I would agree with that.

7 BY MR. BOWMAN:

8 Q. You testified a few minutes ago that it
9 was in your experience not unusual for a witness to
10 want to remain in a locked interview room for 24
11 hours. Did I get that right?

12 A. Yes.

13 Q. How many witnesses have you known who
14 wanted to remain in a locked interview room for 24
15 hours?

16 A. I don't believe I could put a number on
17 it. But I would say that there were many over the
18 years.

19 Q. Would you say dozens?

20 A. That would be fair.

21 Q. How about 50, 100?

22 MR. BRODERICK: Objection, calls for
23 speculation.

24 THE WITNESS: I don't know that I could -- I

1 don't know that I could answer that with a number.
2 But dozens seems like a fair answer.

3 BY MR. BOWMAN:

4 Q. Can you give me the names of any of those
5 witnesses who wanted to remain in a locked
6 interview room for 24 hours?

7 A. I don't believe I can.

8 Q. Is there anything that can help you
9 remember those names?

10 A. Not that I can think of.

11 Q. What helps you -- what makes you confident
12 in your testimony that there were dozens who wanted
13 to remain in a locked interview room for 24 hours?

14 A. From my memories of those incidents.

15 Q. Let me ask you this: Is that because in
16 your memory every witness that you ever locked in
17 an interview room for 24 hours wanted to remain
18 there? Is that what you're telling us?

19 MR. BRODERICK: Objection to the form of the
20 question.

21 THE WITNESS: Could you repeat that question?

22 MR. BOWMAN: Sandy will read it.

23 (Record read.)

24 MR. BRODERICK: Objection, vague as to wanted.

1 his answer.

2 BY MR. BOWMAN:

3 Q. I'm sorry. Go ahead.

4 A. But I have a recollection of other people
5 there that, you know, I didn't put in the room that
6 were there and wanted to be there.

7 Q. But you can't tell us the names of any of
8 those people?

9 A. I don't know the names.

10 Q. Can you tell us anything about the
11 investigations that involve those people?

12 A. I don't really have any specifics on the
13 investigations.

14 Q. Can you tell us anything at all that would
15 help us to track those people down so that we could
16 talk to them and ask them if they wanted to be in
17 those interview rooms as you've testified?

18 A. I can't think of anything that would help
19 right now.

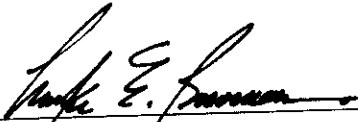
20 Q. You also said that it's not unusual for a
21 witness to want to remain in a locked interview
22 room at area headquarters for 36 hours?

23 A. Correct.

24 Q. Can you give me the name of any witness

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served the foregoing Plaintiff's Motion for Preliminary Injunction upon all parties listed on the attached service list by hand delivery before the hour of 5:00 p.m. on Thursday, April 28, 2005.



Locke E. Bowman